

calculation involves the use of model parameters, but the calculation does not involve the selection of particular ones of the parameters for use in the equations. Instead, the calculation apparently uses all of the parameters available at the time of execution. One purpose of the present invention is to lessen the inefficiency stemming from the use of all of the available parameters in a model calculation, this inefficiency being lessened from the use of "only specific...parameters... at a time for estimation, the selection being performed on the basis of the dynamic response of the measured performance quantities." Specification at page 2, lines 14-18. Because the Birkle invention lacks such a selection of parameters as recited in claim 1, Applicants submit that Birkle does not identically teach all of the limitations of claim 1.

Similarly with respect to claim 7, Birkle falls short of anticipating this claim as well. According to the Examiner, the adaptation stage 14 in Birkle meets the selection unit recited in the claim. According to claim 7, the function of the selection unit is "to select at least one of ... ones of the at least one system-dependent model parameter determined in ... the parameter estimator depending on the dynamic response." Adaptation stage 14 performs no selection whatsoever; instead, adaptation stage 14 adapts all of the parameters, and not a selected subset, to minimize the voltage difference between the measured and modeled voltage output values. Column 4, lines 53-58.

As for claims 9-12, these claims are patentable for at least the reasons given above. Accordingly, withdrawal of the rejection of claims 1, 7, and 9-12 is respectfully requested.

Claims 2-4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Birkle in view of United States Patent No. 6,515,454 to Schoch ("Schoch"). Applicants submit that the Examiner erroneously relied on Schoch to reject these claims because he is prohibited from doing so based on 35 U.S.C. § 103(c). Although Applicants are presenting this argument based on Section 103(c) to remove Schoch as a reference, Applicants reserve the right, should it become necessary or desirable to do so, to distinguish Schoch on the basis that this reference does not teach the limitations recited in claims 2-4. According to Section 103(c), a reference may not be relied on to demonstrate obviousness under Section 103(a) if the reference qualifies as prior art only under Section 102(e) and it was commonly owned with the application by the same entity. See Section 706.02(l)(2) of the MPEP. Applicants submit that this application and the Schoch patent were, at the time the invention of this application was made, owned by Robert Bosch GmbH. Further, the Schoch reference qualifies only under Section 102(e) as prior art because only its filing date of

February 12, 2002, is before the filing date of the present application. Accordingly, since Section 103(c) prohibits the Examiner from relying on Schoch to reject the claims under Section 103(a), withdrawal of the rejection of claims 2-4 is respectfully requested.

Claims 5, 6, and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Birkle in view of United States Patent No. 6,441,586 to Tate, Jr. et al. ("Tate"). In order to perfect their claim to foreign priority, Applicants submit herewith a verified translation of German Priority Document No. 101 06 505.1. Since the priority date of February 13, 2001, established by reliance on this German document predates the earliest prior art date of March 23, 2001, for Tate, Applicants submit that this rejection should be withdrawn.

It is respectfully submitted that the subject matter of the present application is new, non-obvious, and useful. Prompt consideration and allowance of the application are respectfully requested.

Respectfully submitted,

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